

Panaji, 16th June, 1994 (Jyaistha 26, 1914)

SERIES II No. 11

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

Department of Labour

Order

No. 28/65/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Joint Secretary (Labour).
 Panaji, 18th July, 1991.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/2/90

Workmen	—	Workmen/Party I
V/s		
M/s. Kamat Industries	—	Employer/ Party II

Workmen represented by Shri R. Mangueshkar
 Employer represented by Shri B. G. Kamat, Advocate.

Panaji: Dated: 28-6-1991.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of

Goa, by its order No. 28/65/89-LAB dated 9th Jan. 1990, has referred the following dispute for adjudication.

I. (a) Whether the demand of the Goa Trade and Commercial Workers Union for payment of back wages to S/Shri Deepak Parab and Narayan Naik upon their reinstatement covering a period from 13-12-88 to 9-9-89 in respect of Deepak, from 13-12-88 to 6-9-89 in respect of Narayan is legal and justified?

(b) "If not, to what relief each of the above workman is entitled?

II. (a) Whether the action of the management of M/s Kamat Industries, Zuarinagar, Goa, in terminating the services of their workman Shri Chandrakant Naik w.e.f. 13-12-88 is legal and justified?

(b) If not to what relief the workman is entitled?

2. On receipt of this reference, notices were issued to both the parties and in response thereof both the parties appeared and submitted their respective claims. Party I are the workers of Party II - M/s. Kamat Industries and they raised a dispute regarding termination of the services and back wages.

3. Party II - M/s. Kamat Industries by its written statement at Exb. 3 resisted the workmen's claim contending inter alia that the union which has raised this dispute has no locus standi to sponsor a dispute and that this Court has no jurisdiction to decide the reference made by the Government of Goa. It has also been contended that on account of continuous heavy losses as well as paucity of orders for its products, Party II was forced to close its establishment w.e.f. 13th Nov., 1990 and hence it terminated the services of all the workmen on tendering to them their legal dues. It was therefore submitted that in view of the closure of the establishment the present reference does not survive for adjudication.

4. Party I then submitted its rejoinder at Exb. 4, wherein its reiterated its claim made in Exb. 1 and contended that the contentions taken by Party II are not true.

5. On these pleadings the parties went on trial on the issues which are framed at Exb. 5 and then the matter was posted for hearing.

However, in the meantime, it was submitted by the representatives of both the parties that there was a possibility of an amicable settlement between the parties and hence the parties sought some adjournments. Finally, the parties arrived at a settlement and accordingly on 27th June, 1991, both the parties submitted the terms of settlement and requested the Tribunal to pass an award in terms of the settlement.

6. At the time of tendering the settlement deed, it was submitted before me that Party II- M/s. Kamat Industries closed its Unit at Sancoale Industrial Estate w.e.f. 13-11-90. However, the union raised a dispute and contended that the management locked out the workmen illegally. Thereafter Party II-Employer sought the intervention of the Labour Commissioner and the matter was discussed in his office on several occasions. Finally, the parties arrived at a settlement on certain terms and conditions which have been filed in this case at Exb. 7. On submission of the terms of settlement it has been submitted by both the sides that in view of this settlement the Tribunal should be pleased to pass an award in terms of this settlement. After having perused the terms of settlement, I am satisfied that they are certainly in the interest of the workmen and hence a consent award need be passed in this reference. I, therefore pass the following consent award.

ORDER

1. It is agreed between the parties that the industrial unit run by the management of M/s. Kamat Industries is deemed to have closed irrevocably w.e.f. 13-11-90.
2. The management agrees to pay retrenchment compensation, gratuity on prorata basis, earned wages for the month of October, November, 1990 upto 12-11-90, notice pay, leave salary and ex-gratia amount equivalent to 6 months salary to the workmen affected closure on or before 31-3-91. A chart showing the dues payable to the workmen is enclosed and Annexure 'A' to the settlement Memo.
3. It is agreed between the parties that industrial disputes in respect of Charter of Demands and payment of back wages and continuity services (IT/2/90) pending before the Industrial Tribunal, Panaji stand fully and finally settled.
4. The employer shall issue bonafide service certificates to the workmen.
5. In view of the foregoing clauses, the union and the workmen agree that all their disputes with the employer, M/s. Kamat Industries are conclusively settled and that they shall have no claim of whatsoever nature against the said employer.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/68/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Joint Secretary (Labour).
Panaji, 17th July, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI
(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/59/90

Shri Peter A. Pereira	—	Workman/Party I
V/s		
M/s. Centro de Comercio Mundial	—	Employer/Party II

Panaji: Dated: 5-7-91.

AWARD

In exercise of the powers conferred by clause (d) of Sub- Sec. (1) of section 10 of the Industrial Dispute Act, 1947 the Government of Goa by its order No. 28/68/90-LAB dated 10th Dec. 1990, has referred the following issue for adjudication by this Tribunal.

"Whether the action of the management of M/s. Centro De Comercio Mundial, Panaji, in terminating the services of Shri Peter A. Pereira, Incharge/Assistant Manager, with effect from 2-4-1989 is legal and justified?

If not to what relief the workman is entitled?

2. On receipt of this reference, notices were issued to both the parties in response to which party I appeared and filed his claim statement (Exb.7) wherein he has averred thus;

Party I- Peter A. Pereira (hereinafter called as the ' workman ') was employed as Asst. Manager in the services of Party II-M/s. Centro De Comercio Mundial, Panaji, Goa (hereinafter called as the ' Employer '), from 4.2.79 under a letter of appointment No. CCM/846/75 dated 1-4-75. The last drawn wages of the workman were Rs. 550/- p.m. It is the say of the workman that although he was designated as the Asst. Manager still he was required to do the duty of making sales, handling cash, writing day to day accounts and other books and all other work of clerical nature. That time one of the partner of the employer by name Shri Agnelo De Souza was managing the affairs of the shop. It is the say of the workman that the employer's shop is a partnership concern having shops at Margao and Vasco in the same name and the same shops deal in retail sale of liquor and other provision items. Now, although the workman worked

with the employer dedicately, honestly having a clean service record, still on 3-4-89 at about 12.40 p. m. Mr. A. D'Souza drove him out of the shop and told him that his services were no more required. However, the workman was not given any letter of termination, nor one month's notice, nor pay in lieu of notice, nor offered anything as his retrenchment compensation at the time of termination of his services. According to the workman the shop of Party II is governed by the service rules as prescribed under the Goa, Daman and Diu Shops and Establishments Act, 1973 and Rules 1975 made thereunder. Thus according to the workman his services were illegally terminated without giving him any legal dues. In fact payment of his legal dues such as Gratuity, retrenchment compensation, notice pay etc., were the conditions preceded for termination. However, this procedure was not followed. Thereafter on 26-4-89 the workman raised a dispute before the Commissioner, Labour and Employment, Panaji, Goa. In the conciliation proceedings the employer contended that on 3-4-90 at about 12.45 hours he offered a letter of retrenchment alongwith the legal dues in accordance with the provisions of Sec. 25 (F) of the I. D. Act, but the workman refused to accept the same. According to the workman no letter of retrenchment was issued to him, nor his legal dues were tendered, but the employer took a false defence to show his bonafides. Thereafter in the conciliation proceedings the employer offered re-employment by a letter dated nil. Accordingly on 18-9-91. the workman went to the shop of the employer. However, he was refused entry and was further threatened that if he again tried to attend the shop, he would be involved in some criminal offence. Thus the employer totally refused re-employment to the workman. Thus there was no settlement of the dispute and hence the workman claims that the order of illegal termination should be set aside and that he should be reinstated with full back wages and other incidental reliefs.

3. Party II- employer was duly served and he engaged Shri G. K. Sardessai and Adv. R. Pinto vide Exb. 9 who appeared before this Tribunal on 22-1-91 and requested time for filing written statement. That was granted and the case was fixed on 7-2-91. On that day Shri Pinto for the employer requested for adjournment to file his written statement. It was granted and the case was fixed on 19-3-91. On that day also Shri Pinto again requested the Tribunal for granting an adjournment to file written statement and the same was granted and the case was fixed on 26-3-91. However on 26-3-91 Adv. R. Pinto retired for want of instructions and hence I directed to issue notice to the employer. In response to that notice the employer appeared through his Adv. Pinto on 10-4-91. On that day the case was adjourned to 16-4-91. On that day Adv. Pinto for the employer submitted before the Tribunal that his client wanted to settle the matter amicably and hence he prayed for an adjournment which was granted and the matter was kept for settlement or hearing on 20-5-91. On that day there was no appearance either of the employer himself or his Advocate and hence the case was fixed for ex-parte evidence on 21-5-91.

4. On 21-5-91 there was no appearance on behalf of the employer and hence Adv. P. J. Kamat for the workman led the evidence of the workman and produced some documents. I have purposely reproduced the substance of the roznama with a view to show that although several adjournments were obtained by the employer's Advocate still ultimately no written statement was filed on behalf of the employer under the pretext that the employer wanted to settle the dispute amicably. However, as I have stated earlier, the employer did not care to remain present on the date of hearing. It is under these circumstances that there was no other goal but to proceed with ex-parte hearing.

5. In support of his claim workman Peter A. Pereira, led his evidence at Exb. 14 wherein he has stated that he was employed as Asst. Manager with Party II, since March, 1975. He has also produced the letter of appointment dated 1st April, 1975, which clearly shows the terms and conditions on which the workman's appointment was made w.e.f. 1-4-75. It is at Exb. 15. He has further stated that when his services were terminated his salary was Rs. 550/- p.m. He was also doing the work of the salesman as also the clerical work of writing accounts etc. He was also looking after the correspondence and cash. He has further stated that on 3-4-89 the employer's partner came to him and reported that he was closing the shop and that his services were terminated. However, it was a false excuse as can be seen from the fact that the shop is still running and that it was not closed at any time. The workman has stated that he was not given any notice nor his legal dues and thus his services were illegally terminated. He therefore, approached the Labour Commissioner by sending a letter dated 26-4-89 (Exb. 16). In the conciliation proceedings Party II gave a letter directing the Employee to rejoin either on 11th or 18th of Sept., 1989. That letter is at Exb. 17. However on 18-9-89 when the workman went to join his services he was not allowed to join and instead he was threatened by the partners saying that in case if he tried to enter the shop he would be involved in some criminal offence. Hence, the workman was helpless and thereafter the workman sent a letter to the employer which is dated 20-9-89, a copy of which can be found at Exb. 18. He also sent a copy of this letter to the Commissioner for Labour and Employment vide Exb. 19. On 29-9-89 he again sent one more letter to the employer, the copy of which is at Exb. 20. However, there was no response from the employer nor was he allowed to rejoin and hence the workman prays that the should be given the reliefs claimed by him.

6. Now, whatever has been stated by the workman has gone unchallenged on account of the employer's absence on the date of hearing. Besides if the employer had any valid defence to make then I think he would have chosen to remain present by contesting the workman's claim. Moreover whatever has been stated by the employee is fully born out by the documentary evidence to which a reference has been made in the last para. In view of this state of affairs I feel absolutely no hesitation in accepting the workman's assertions in proof of the fact that his services were illegally terminated and that he was not offered or given his legal dues.

7. In view of this state of affairs, it follows that the workman is entitled to the relief of reinstatement with full back wages. I, therefore pass the following award.

ORDER

It is hereby declared that the action of the management of M/s. Centro De Comercio Mundial, Panaji Goa, in terminating the services of Shri Peter A. Pereira, w.e.f. 2-4-1989 was illegal and unjustified and hence it is hereby ordered that Party II M/s. Centro De Comercio Mundial, shall reinstate Party I- Peter A. Pereira in service and shall pay him full back wages and other incidental reliefs to which he would have been entitled to, had he not been retrenched from 2-4-89.

No order as to costs. The Government be informed accordingly.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/41/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
V. G. Manerkar, Under Secretary (Labour).
Panaji, 21st August, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/38/88

Workmen — Party I
V/s
M/s Plast-O-Pack — Party II

Shri P. K. Lele is representing the Employer.
Shri R. Mangueshkar is representing the workmen.

Panaji: Dated: 31-7-1991.

AWARD

In exercise of the powers conferred by Sub.- Sec. (2) of Sec. 10 of the Industrial Disputes Act, 1947, the Govt. of Goa, by its order No. 28/41/88-ILD dated 17th November, 1988 has referred the following issue for adjudication by this Tribunal.

“ Whether the action of the management of M/s Plast -O-Pack, C-1 Corlim Industrial Estate, in refusing to concede the following demands shown in schedule 'A' annexed hereto and enumerated in the charter of demands raised by the Union by letter dated 1-4-1988 is justified or not?

If not, what relief the workmen are entitled to ?

2. Schedule 'A' appended to this reference refers to as many as 6 demands made by Party I, which include (1) Revision of Pay Scales, (2) House Rent Allowance, (3) Fixed Dearness Allowance, (4) Variable Dearness Allowance, (5) Travelling and Sundry Allowance and (6) Uniforms and Washing Allowances.

3. On receipt of this reference, case at IT/38/88 was registered and notices were served upon both the parties. In response to the notice, Party I — Workman appeared and submitted a statement of claims which can be found at Exb. 2. In the said statement of claim they tried to justify their demands for revision of pay scales and other allowances. In response to the notice, Party II Employer appeared and submitted his written Statement at Exb. 3 wherein he tried to challenge the several demands made by the workmen. Thereafter Party I submitted a rejoinder which can be found at Exb. 4.

4. On these pleadings, my learned Predecessor framed the necessary issues at Exb. 5 and the parties went on trial. After some oral evidence was recorded, it was submitted to this Tribunal that there was every possibility of settling the dispute out of Court and on that count the matter was adjourned from time to time. Ultimately, on 27th July, 1991 the parties submitted a settlement deed and requested the Tribunal to pass a consent award in terms of the settlement at Exb. 13. I have gone through the terms of settlement and have found that they are certainly in the interest of workmen and hence I accept the prayer made by both the parties and pass the following consent award.

ORDER

Since the parties have arrive at a settlement which has been duly recorded at Exb. 13, the following consent award is hereby passed.

TERMS OF SETTLEMENT

1. *Pay Scale* : It is agreed between the parties that the pay scales existing with the employer will continue to remain in operation during the period of this settlement
2. *Dearness Allowance* : It is agreed between the parties that the Employer will pay by way of Dearness Allowance to each workman as follows:

From 1-4-88 to 31-3-89 Rs. 50/- per month.
From 1-4-89 to 31-3-90 Rs. 100/- per month.
From 1-4-90 onwards Rs. 150/- per month.

3. It is agreed to approach the authorities under Employees Provident Fund (Miscellaneous Provisions) Act, 1952, to request them to voluntarily cover the establishment under the provisions of the Act as per Sec. 1 Sub. -Sec. (4) of the Act.
4. It is agreed that the above settles all the Demands mentioned in the schedule of the reference pending before the Industrial Tribunal.

No order as to costs.

The Government be informed of the award accordingly.

Sd/-

(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/62/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
V. G. Manerkar, Under Secretary (Labour).
Panaji, 29th, August, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/87/89

Shri P. K. Bansal — Workman/Party I
V/s
M/s Sahi Oretrans Pvt. Ltd. — Employer/Party II

Panaji: Dated: 6-8-91.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Sec. 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/62/89-LAB dated 5th December, 1989, has referred the following three issues for adjudication by this Tribunal.

SCHEDULE

- (1) "Whether Shri P. K. Bansal, Resident manager of M/s Sahi Oretrans Pvt. Ltd., Vasco, is a workman under section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947)?"
- (2) If so, whether the action of the management of M/s. Sahi Oretrans Pvt. Ltd., Vasco, in terminating the services of Shri P. K. Bansal with effect from 8-8-1989 is legal and justified?
- (3) If the answer to (2) above is negative, to what relief the workman is entitled?"

2. On receipt of this reference, case No. IT/87/89 was registered and notices were directed to be sent to both the parties. In response to the show cause notice, Party I Workman did not appear on 17-1-90 but he engaged Adv. A. Nigalye to appear before this Tribunal. Party II-Employer was represented by Shri B. G. Kamat who appeared before this Tribunal. On 7-4-90, Shri Nigalye informed his intention to withdraw his appearance as the workman did not care to contact him. Hence the matter was adjourned to 5-5-90. On that date there was no appearance on behalf of the workman. Same was the case on the adjourned date which was fixed on 23-5-90. Thereafter the matter was adjourned to 8-6-90 on which date Shri Nigalye informed the Tribunal that he was withdrawing from this case. Thereafter, he withdrew his appearance on 14-6-90 and hence my learned Predecessor directed to send one more notice. The case was adjourned to 6-7-90. The notice was issued to the workman by Registered A. D. post but he was absent. Thereafter the case was adjourned to 20-8-90. Thereafter there was no appearance on behalf of the workman and he did not file any statement of claim in support of his case, although Shri B. G. Kamat used to be present on behalf of Party II. In view of the matter the only course now open for me, as contemplated under Rule 10-B sub. clause 9 of the I. D. Rules is to proceed in default of Party -I Workman. Now the entire burden of proving that he is a workman as contemplated u/s 2 (s) of the I. D. Act and to prove that the order of termination passed by the

Employer was illegal or unjustified was obviously upon Party I-Workman. However, as stated earlier although the case was adjourned on several dates still the workman did not care to remain present to prove the first two issues referred to this Tribunal and hence I hold that he has not succeeded in proving his claim and hence I answer all the three issues in the negative and pass the following order:

ORDER

It is hereby declared that the order of termination of Shri P. K. Bansal w.e.f. 8-8-89 is legal and justified and hence he is not entitled to any relief whatsoever.

No order as to costs. The Government be informed accordingly about the passing of the above order.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/64/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
V. G. Manerkar, Under Secretary (Labour)
Panaji, 28th August, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/53/90

Mr. Terence D'Silva — Workman Party I
V/s
M/s National Computers — Employer/Party II

Workman represented by Shri Subhas Naik.

Panaji: Dated: 26-7-1991.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Sec. (1) of Section 10 of the Industrial Disputes Act, 1947, the Government

of Goa, by its order No. 28/64/90-LAB dated 16-11-1990 has referred the following issues for adjudication by this Tribunal.

“ Whether the action of the management of M/s National Computers, Panaji, in terminating the services of Shri Terence D'Silva, Administrative Assistant, w.e.f. 2.9.1989 is legal and justified?

If not, to what relief the workman is entitled?”

2. On receipt of this reference case No. IT/53/90 was registered and notices were sent to both the parties. In response to the notice, Party I- Workman Shri Terence D'Silva (hereinafter called as the 'Workman'), appeared before this Tribunal and submitted a statement of claim Exb. 7, wherein he has contended thus:

3. Party II- M/s National Computers, Panaji (hereinafter called as the ' Employer') is a partnership firm which is engaged in the business of training as well as selling software, computers etc. Party I- workman was first appointed as an Administrative Assistant on a monthly salary of Rs. 900/- from 1-7-88. Prior to this, his services were utilised as a Trainee and was sent to Bombay for training. Party I, honestly and diligently worked with party II and there was no complaint for over a year. However, on 5-8-89, the workman was surprised to receive a letter from party II under which his services were terminated w.e.f. 2-9-89 without assigning any reasons. At the time of termination Party I was not given one month's notice as per rules, although he had put in more than 240 days of service in a year. He was not paid nor offered retrenchment compensation, nor gratuity as per the provisions of Shops and Establishment Act. Aggrieved by this illegal and unjustified termination Party I raised a dispute before Party II as well as before Labour Commissioner by his letter dated 19th October, 1989. The dispute came up before the Labour Commissioner however, Party II did not attend the conciliation proceedings. An Advocate appointed by Party II appeared before the Labour Commissioner on some occasions and he agreed to settle the dispute. However, at a later stage, neither Party II nor its advocate appeared before the Labour Commissioner and hence the dispute ended in failure. The Labour Commissioner accordingly submitted his failure report of conciliation to the Government, after which the Government was pleased to refer this dispute to this Tribunal.

4. It has been submitted by Party I, that the order of termination is unjust and illegal, as Party II did not comply with the mandatory provisions of Sec. 25 F of the Industrial Disputes Act and hence he has claimed the reliefs of reinstatement with full back wages and continuity of service.

5. Although Party II- employer was duly served with a notice still there was no appearance on behalf of Party II on 16-1-91. Hence I directed to issue one more notice returnable on 9-2-91. Although the notice was served to Party II by hand delivery still there was no appearance on behalf of Party II on 18-3-91. Hence I again directed to issue one more notice returnable on 19-4-91. In spite of the proper service of the said notice, Party II did not appear on 19-4-91 and hence the case was posted for ex-parte hearing. It was then adjourned on two occasions but even then Party II was absent. Finally, the case came up for ex-parte hearing on 25-7-91. It is under these circumstances and regard being had to the provisions contained in Rule 10-B Sub. Clause (9) the Tribunal had no other goal but to proceed ex- parte against Party II.

6. In support of his claim Party I -workman has examined himself at Exb. 8 and he has also produced the relevant documents. He has stated in his sworn statement at Exb. 8 that he was appointed as

Administrative Assistant from 1-7-88 by Party II on a monthly salary of Rs. 900/-. However, his services were terminated w.e.f. 2-9-89 under a letter which he did not accept. At the time of termination of his services he was not paid anything and hence he made a representation to the Manager of Party II as also to the Labour Commissioner. He has produced the office copy of his representation which can be found at Exb. 9. In response to his representation conciliation proceedings were held before the Labour Commissioner. However, as there was no settlement the Labour Commissioner sent a failure report to the Government, the copy of which can be found at Exb. 10. The workman has further stated that his services were terminated without assigning any reasons and without following the mandatory provisions laid down in the I. D. Act. Now, whatever has been stated by the workman has gone unchallenged as there was no appearance on behalf of Party II -Employer. In view of the matter and regard being had to the documentary evidence produced by the workman, I feel absolutely no hesitation in accepting the workman's statement in support of his contention that his services were illegally terminated by Party II - Employer without assigning any reasons, without holding any enquiry and without complying with the mandatory provisions laid down in Sec. 25 F of the I.D. Act. In view of this conclusion, I hold that the action of the management of M/s National Computers, Panaji, in terminating the services of the workman Shri Terence D'Silva is not legal and justified and hence the issue referred to this Tribunal will have to be answered in negative.

7. After having concluded as above the next question that arises for consideration is to determine to what reliefs Party I is entitled. Now, normally on account of illegal termination of the workman he would have been entitled for reinstatement with full back wages and other legal dues. However, the workman has very honestly stated that since he has found that the employer is not interested in re-appointing him, he is not claiming reinstatement. Instead he has claimed his legal dues on account of illegal termination, which amount comes to more than Rs. 20,000/- However, he has very honestly stated that he is satisfied if an amount of Rs. 10,000/- is awarded to him in full satisfaction of his claim. The demand made by Party I- Workman appears to be quite reasonable and hence I grant the same and pass the following order:

ORDER

It is hereby declared that the action of the management — M/s National Computers, Panaji, Goa, in terminating the services of Shri Terence D'Silva, Administrative Assistant, w.e.f. 2-9-89 is not legal and justified.

2. However, Shri Terence D'Silva is not entitled to the relief of reinstatement with full back wages etc., and instead it is hereby ordered that the management M/s National Computers Panaji, Goa shall pay a net amount of Rs. 10,000/- (Rupees ten thousand only) in full satisfaction of the claim made by Party I, on or before 1-10-1991 failing which Party I would be entitled to recover interest at 12% over the aforesaid amount from 1-10-1991 till the entire amount is released.

3. No order as to costs.

4. Inform the Government accordingly about the passing of the award.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/56/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary, (Labour).

Panaji, 4th February, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/80/89

Workmen
V/s

— Workmen/Party I

M/s Goa Steel Rolling Mills Pvt. Ltd. — Employer/Party II

Workmen represented by Adv. G. Shirodkar.

Employer represented by Shri A. M. Kamik.

Panaji: Dated: 25.1.1991.

AWARD

The Govt. of Goa, by its order No. 28/56/89-LAB dated 26th October, 1989 has made this reference u/s 10 (1) (d) of the Industrial Disputes Act, 1947, for adjudication of the following issue viz.

"Whether the following demands of the workmen represented by the Gomantak Mazdoor Sangh, Vasco-da-Gama, and raised on the management of M/s Goa Steel Rolling Mills Private Limited, Bicholim Goa, are justified?"

2. On receipt of this reference IT/80/89 was registered and notices were served upon both the parties. Pursuant to the notice, the workmen appeared and filed a claim statement which is at Exb. 2. In their claim statement, they have stated that they are entitled to revised pay scales, D. A., H. R. A., etc., as noted down in the annexure appended to the schedule of demands. Party II, did not file any written statement probably because negotiations were going on for settling the issue of demands made by the workmen. However, it seems that after prolonged discussions, both the parties arrived at a settlement on 21st Dec., 1990. The said settlement was filed before the Commissioner for Labour and Employment on the said date and a copy thereof has been filed before this Tribunal which has been fully verified by the learned advocates/representatives of both the parties. Hence it is recorded.

3. The learned advocates/representatives of both the sides have submitted that in view of this settlement a consent award should be passed in terms of settlement deed and hence I accept the said suggestion and pass the following order:

ORDER

It is hereby ordered that the dispute between the parties referred to this Tribunal, having been settled by a settlement deed, which shall form a part of the judgement, the following consent award is hereby passed.

1. Without prejudice to the contention of the union that the workmen on no account went on strike on 14-9-90 and without prejudice to the contention of the employer that they were compelled to declare lockout from 15-9-90 on account of strike and subsequently gave closure notice, it is agreed that industrial establishment of M/s Goa Steel Rolling Mills at Bicholim shall be opened and the workers who were on the Rolls of the Company as on 13-9-90 shall report for duties on lifting such lockout with effect from 24-12-90.
2. In view of Clause (1) above, both parties agree to refer the issue of strike/lockout period wages from 15-9-90 to 23-12-90 jointly to Industrial Tribunal under Section 10(2) of the Industrial Disputes Act, 1947.
3. It is agreed that bonus for the accounting year ending 31-3-89 shall be received by the workmen who have not received such payment so far at the rate of 15% including ex-gratia and besides 'Bakshis' of Rs 100/- each. This amount shall be paid to those who have not received the same, on 31-12-90. Further, parties agree that bonus for the accounting year ending 31-3-90 shall be paid to the workmen by the employer at the rate of 8.33% on 31-1-91. This amount however, shall be accepted by the union under protest withholding their right and the demand for 20% bonus for this year on which parties shall hold negotiations further.
4. In settlement of Charter of Demands, considering that the employer has given a rise on an average at the rate of Rs. 115/- per month per worker with effect from 1-4-89 and similar rise over and above the rise given on 1-4-89 another rise of the same average with effect from 1-4-90, it is agreed that these workers' wages shall be revised with effect from 1-4-91 by giving them a rise of Rs. 126/- per month which shall be by way of Rs. 26/- in wages and Rs. 100/- by way of F. D. A.

Further, the next rise/increment will be with effect from 1-4-92 which shall be a rise of Rs. 137/- per month which shall be by way of a rise of Rs. 52/- in wages and Rs. 85/- in F. D. A. bringing F. D. A. figure from Rs. 100/- to Rs. 185/- w. e. f. 1-4-1992.

Further agreed that next increment in the wages shall be with effect from 1-4-93 by a rise of Rs. 142/- per month which shall be by way of Rs. 52/- in wages and Rs. 90/- in F. D. A. thus revising the F. D. A. from Rs. 185/- to Rs. 275/- per month.

5. It is agreed between the parties that this settlement including the terms of settlement for revision of wages shall be in settlement of their dispute on Charter of demands which is pending adjudication and therefore agreed to submit a copy of this settlement to the Industrial Tribunal, Govt. of Goa for award in terms of this settlement.
6. It is agreed between the parties that the employer shall pay an ex-gratia amount of Rs. 625/- per worker in settlement of their demand for revision of wages with effect from 1.1.89 to 31.3.91. This lumpsum amount shall be paid to the workmen on 7.1.91.
7. It is agreed between the parties that this settlement of revision of wages shall remain in force for a period ending upto 31.12.93. The union further agrees not to raise any demand involving financial liabilities on the employer during the operative period of this settlement. This clause, however, shall not apply in case for demand for any bonus under Payment of Bonus Act, 1965.
8. The Union and the workmen agree that during the operative period of this settlement, they shall not resort to any direct action including the action like go-slow and extend their fullest cooperation to give the optimum production.

The Union and the workmen further agree not to interfere with any of the management's function pertaining to conduct of their business and running of the yard.

9. The employer agrees that the union viz. Gomantak Mazdoor Sangh stands duly recognised, and the management of M/s Goa Steel Rolling Mills Ltd., agree not to victimise any of the workmen in trade union activities.
10. It is agreed between the parties that pendency of adjudication proceedings in respect of termination of service of some workmen shall not be the cause for any agitation by the workmen. However, in respect of termination of services of 4 workmen viz. M. D. Thomas, Ramkrishna Ambre, Gautam Mane and Premanath Halarnekar, it is agreed that Shri M. D. Thomas shall be reinstated with continuity of service without any change in service condition and the cases of other 3 workmen shall be dealt with in accordance with the provisions of Industrial Disputes Act, 1947 which are pending conciliation.
11. Both parties agree to discuss at mutual level the pending issues like proposed change in the shift timing and demand of the employer to get the quarters vacated for an amicable understanding and outcome, for which parties agree to commence negotiations within two months from the date of this settlement.

12. Both parties shall submit their joint applications as mentioned in the above clauses for reference under Section 10 (2) of the I. D. Act, 1947 in the office of the Commissioner, Labour and Employment on or before 25.2.91.

No order as to costs.

Inform the Government of Goa, accordingly about the passing of the award.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/35/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 8th March, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/49/89

Shri Premanand Shirodkar — Workman/Party I
V/s
M/s Gururaja Industries — Employer/Party II

Workman /Party I represented by Shri Raju Mangueshker
Employer /Party II represented by Adv. R. Lobo.

Panaji: Dated : 9-2-91.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Govt. of Goa, by its order No. 28/35/89-LAB dated 26th July, 1989, has referred the following issue to this Tribunal for adjudication :

"Whether the action of the management of M/s. Shri Gururaja Industries, Sancoale Industrial Estate, Zuarinagar-Goa, in terminating the services of Shri Premanand Shirodkar, Turner/Machinist with effect from 9.2.1989 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. A few facts giving rise to this reference need be stated in the beginning.

Party I, Shri Premanand Shirodkar was serving with Party II- M/s Shri Gururaja Industries, Zuarinagar, Goa. However, his services were terminated w. e. f. 9.2.89. Hence, he took up the matter before the Asst. Labour Commissioner, Vasco, for conciliation. However, as there was no settlement a failure report was submitted and hence the Govt. of Goa, made the above reference to this Tribunal for adjudication.

3. On receipt of this reference, IT/49/89 was registered and the notices were issued to both the parties, in response to which, both the parties appeared in this Court and submitted that there was every possibility of arriving at a settlement and hence they requested some time to file a compromise. Accordingly, on this day, both parties filed a settlement deed which has been duly verified and I have found that the terms of the settlement are certainly in the interest of Party I-Workman. Hence, it is recorded. The learned Advocates/Representatives of both the parties submitted that in view of the settlement a consent award be passed and hence I accept their submission and pass the following consent award.

ORDER

1. It is agreed between the parties that Shri Premanand Shirodkar agrees to accept and M/s Shri Gururaja Industries agrees to pay the workman an amount of Rs. 9000/- (Rupees nine thousand only) in full and final settlement of all his claims arising out of his termination.
2. It is hereby agreed that the Employer will pay the sum of Rs. 9,000/- in one instalment vide cheque No. 872560 dated 15th March, 1991 drawn on Corporation Bank, Camorlim, Goa, and Shri Premanand Shirodkar agrees to accept the same.
3. It is hereby agreed between the parties that in consideration of the amount mentioned in clause 1 above, all the rights and claims of Shri P. Shirodkar arising out of the reference IT/49/89 have been conclusively settled and that the workman agrees not to re-agitate the issue of termination of his services and that the same is settled fully and finally.

No order as to costs. Inform the Government accordingly about the passing of the award.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/16/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 8th March, 1991.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/20/88

Workmen — Party I/Workmen
V/s
M/s Kamat Real Estate
Developers (Hotel Nova Goa) — Party II/Employer

Workmen represented by Shri Subhas Naik.
Employer represented by Adv. G. K. Sardesai.

Panaji: Dated : 4-2-1991

AWARD

In exercise of the powers conferred by Sub-Section (2) of Section 10 of the Industrial Disputes Act, 1947, the Govt. of Goa by its order No. 28/16/88-ILD dated 6th May, 1988, has referred the following issue to this Tribunal for adjudication;

"Whether the action of the management of M/s Kamat Real Estate Developers (Hotel Nova Goa) in refusing to concede the following demands shown in the Annexure hereto and enumerated in the Charter of Demands raised by the union by letter dated 28th November, 1987, are justified or not ?

If not, what relief the workmen are entitled to ?"

2. On the receipt of this reference, notices were served on both the parties, in pursuance of which Party-I/Workmen appeared in this Court and filed a statement of claim (Exb. 2), wherein they made as many as 9 demands including (1) Revision of Pay-scales/Grades, (2) Flat Rise and Fitment, (3) Service Weightage, (4) Fixed Dearness Allowance, (5) Variable Dearness Allowance, (6) Sundry Allowance, (7) Service Charges, (8) Night Shift Allowance and finally (9) Leave Facilities. In their claim statement they have tried to justify their demands and have claimed that they are entitled to a rise in their emoluments and that Party II/Employer is sound enough to accede to their demands.

3. Party II/M/s Kamat Real Estate Developers (Hotel Nova Goa), by its written statement at Exb. 3 resisted the claim made by Party I, and in substance, it has contended that the demands made by the workmen are exorbitant and that the business of Party II, is not financially so sound, so as to accede to the demands made by the workmen.

4. Thereafter Party I, fixed a rejoinder which can be found at Exb. 4, in which they contraverted the various contentions taken by Party II in its written statement and reiterated their claim made in Exb. 2.

5. On these pleadings my learned Predecessor (Shri S. V. Nevagi), framed the necessary issue at Exb. 5 and on behalf of workman Shri Salvador Cardozo was examined at Exb. 6. He also produced certain documents in support of his oral evidence. His evidence was over on 4.12.89 and thereafter the matter was adjourned from time to time. In the meanwhile my learned Predecessor

Shri Nevagi retired and thereafter on 23.1.91 the matter came up before me, on which day, the learned advocates/representatives appearing for both the parties submitted before me that the parties to this dispute have arrived at an amicable settlement and in proof thereof they submitted a settlement deed dated 27.9.90 which has been duly signed by the concerned parties. After having filed the settlement deed the learned advocates/representatives for both the parties submitted that, in view of the settlement a consent award be passed. Hence the settlement is duly recorded and in view of this position it follows, that a consent award will have to be passed in terms of the settlement.

6. I, therefore, pass the following consent award.

ORDER

1. It is agreed between both the parties that the Management of M/s Kamat Real Estate Developers and M/s AVC Investments & Trading Pvt. Ltd., shall increase the wages of all their workpersons by a flat amount of Rs. 100/- per month with effect from 1.1.1988. It is agreed that this increase is over and above the increase of Rs. 100/- per month given to the workperson with effect from 1.1.1988 vide settlement dated 29.2.1988.

2. It is agreed between both the parties that the Management shall further increase the wages of all workpersons by a flat additional amount of Rs. 50/- per month per worker with effect from 1.7.1991.

3. It is agreed between both the parties that the Managements shall further increase the wages of all workpersons by a flat additional amount of Rs. 50/- per month per worker with effect from 1.1.1992.

4. It is agreed between both the parties that the Managements shall further increase the wages of all the work persons by a flat additional amount of Rs. 25/- per month per worker with effect from 1.7.1992.

5. It is agreed between both the parties that the increase of the wages given to workperson of Rs. 100/- per month, vide settlement dated 29th February, 1988 as well as the additional increase of Rs. 100/- with effect from 1.1.1988; the additional rise of Rs. 50/- per month w.e.f. 1.7.91 and Rs. 50/- per month w.e. f. 1.1.1992 and Rs. 25/- per month w. e. f. 1.7.1992 shall be treated as F. D. A.

6. It is agreed between both the parties that the Managements shall give to the workpersons of both Hotel Nova Goa and Hotel Golden Goa a bonus of 8.33% for the year 1989-90 on or before 15.10.90.

7. It is agreed between both the parties that both the Managements shall give leave facilities each year to their workperson as follows :

Privilege leave of 25 days in a calendar year with a provision of accumulation of PL upto 75 days.
Sick Leave 9 days
Casual Leave 9 days
Holidays 9 days

It is mutually agreed that this leave facility shall be made effective from 1.1.1989.

8. It is mutually agreed between both the parties that this settlement shall be for a period upto 31st Dec., 92.

9. **ARREARS** - The arrears accruing out of the settlements shall be paid to each workperson in two installments after deducting the amounts towards P. F. and E. S. I. S. The 1st instalment falling due on or before 25.12.90 and the 2nd falling due on or before 31.3.1991.

10. It is agreed between the parties that they shall draw up and finalise the service rules within 2 months from the date of settlement for better efficiency and discipline in the hotels.

11. It is mutually agreed between both the parties that they shall both make a joint application to the Hon'ble Presiding Officer, Industrial Tribunal in IT/20/88 and IT/21/88 with a prayer that the said reference be disposed-off as per the terms of the present settlement.

12. It is mutually agreed between both the parties that the workmen shall extend co-operation to the Management to improve their business and all conditions of service, annual increments and benefits to the workperson which have not been specifically changed shall remain un-altered and applicable.

No order as to costs. Inform the Govt. accordingly.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/17/86-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 8th March, 1991.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/59/89

Shri Lele Phadte
V/s

— Workman/Party I

M/s Kadamba Transport Corporation Ltd. — Employer/Party II

Workmen represented by Adv. S. Sonak.
Employer represented by Shri P. K. Lele.

Panaji: Dated : 7-2-91.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Govt. of

Goa by its order No. 28/17/86-LAB dated 30th August, 1989 has referred the following issue to this Tribunal for adjudication;

" Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji in terminating the services of their workman Shri Lele Phadte, Conductor, with effect from 22.11.1985 is legal and justified.

If not, to what relief the workman is entitled?"

2. The facts giving rise to this reference can be briefly stated as under: Shri Lele Phadte who is Party I in this case was appointed as a conductor in M/s Kadamba Transport Corporation (Party II) in the year 1982. However, while he was serving in the year 1985, Party II charge sheeted him alleging certain misconducts on his part and after holding a domestic enquiry Party II terminated the services of Party I, w. e. f. 22.11.85. Party I, was aggrieved by the action of Party II and hence he raised an industrial dispute challenging the action of the Corporation. Thereafter the Govt. of Goa, referred the above issue for adjudication to this Tribunal.

3. On receipt of this reference, notices were issued to both the parties in pursuance of which both the parties appeared and submitted their respective contentions. In substance, it was the say of Party I that he was not guilty of any misconduct and that the domestic enquiry was not legal and valid and that it offended the principles of natural justice. He therefore claims reinstatement with full back wages and other legal dues.

4. Party II by its written statement at Exb. 3 resisted the claim made by Party I contending inter alia that the domestic enquiry held by the officers of the Corporation was perfectly legal and valid and that it did not offend the principles of natural justice. It has been contended that since Party I was guilty of misconduct, his services were legally terminated and hence it has been contended that Party I is not entitled to any relief whatsoever.

5. Thereafter Party I, filed a rejoinder (Exb. 4), wherein he challenged all the contentions made by Party II in its written statement and reiterated his say made in the statement of claim.

6. On these pleadings, I framed the issues at Exb. 5 and the matter was posted for recording of evidence.

7. However, in the meantime, both the parties arrived at a settlement and eventually on 6.2.91 a settlement deed was submitted before me with a request that a consent award be passed in terms of the settlement deed. The same was duly verified and I have found that the said settlement is certainly in the interest of Party I-Workman to whom Party II has agreed to reinstate w. e. f. 16.2.91. In view of this state of affairs, I accept the submissions made by the learned advocates/representatives of both the sides and pass a consent award in terms of para 1 to 3 of the settlement.

ORDER

1. The Corporation agrees to appoint Shri Lele Phadte as a regular employee in the category of Conductor with effect from 16th Feb, 1991.

2. In consideration of the opportunity given to him to appoint in the Corporation, Shri Lele Phadte agrees that he has now no dispute against the Corporation in respect of his previous employment in the Corporation.

3. This settlement settles all the matters and issues involved in the reference No. IT/59/89 pending before the Hon. Industrial Tribunal.

No order as to costs. Inform the Govt. accordingly.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/16/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 11th March, 1991.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/21/88

Workmen	—	Party I/Workmen
V/s		
M/s A. V. C. Investments & Trading Pvt. Ltd.	—	Party II/Employer

Workmen represented by Shri Subhas Naik.
Employer represented by Adv. G. K. Sardessai.

Panaji: Dated : 5.2.1991.

AWARD

In exercise of the powers conferred by sub-section (2) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/16/88-ILD dated 9th May, 1988 has referred the following issue to this Tribunal for adjudication;

"Whether the action of the management of M/s Investments and Trading Private Limited in refusing to concede the following demands shown in the Annexure hereto and enumerated in the Charter of Demands raised by the Union by letter dated 28th November, 1987 are justified or not ?

If not, what relief the workmen are entitled to?"

2. On the receipt of this reference, notices were served on both the parties, in pursuance of which Party I/Workmen appeared in this Court and filed a statement of claim (Exb. 2), wherein they made as

many as 9 demands including (1) Revision of Pay-scales/Grades, (2) Flat Rise and Fitment, (3) Service Weightage, (4) Fixed Dearness Allowance, (5) Variable Dearness Allowance, (6) Sundry Allowance, (7) Service Charges, (8) Night Shift Allowance and finally (9) Leave Facilities. In their claim statement they have tried to justify their demands and have claimed that they are entitled to a rise in their emoluments and that Party II/Employer is sound enough to accede to their demands.

3. Party II/M/s A. V. C. Investment & Trading Pvt. Ltd. (Hotel Golden Goa), by its written statement at Exb. 3 resisted the claim made by Party I, and in substance, it has contended that the demands made by the workmen are exorbitant and that the business of Party II, is not financially so sound, so as to accede to the demands made by the workmen.

4. Thereafter Party I, filed a rejoinder which can be found at Exb. 4, in which they contraverted the various contentions taken by Party II in its written statement and reiterated their claim made in Exb. 2.

5. On these pleadings my learned Predecessor (Shri S. V. Nevagi) framed the necessary issues at Exb. 5 and on behalf of workmen one Shri Jose Lourdes D'Souza was examined at Exb. 6. His evidence was over on 19.9.89 and thereafter the matter was adjourned from time to time, till my learned Predecessor retired. Thereafter on 23.1.91 when the matter came up before me for hearing the learned advocates/representatives appearing for both the parties submitted before me that the parties to this dispute have arrived at an amicable settlement and in proof thereof, they submitted a settlement deed dated 27.9.90 which has been duly signed by the concerned parties. At this stage, it will have to be noted that there is a companion case which has been registered as case no. IT/20/88, which is also a reference u/s 10 (2) of the Industrial Disputes Act, in which an issue similar to the issue in the present case has been referred by the Govt. of Goa, for adjudication. The parties and the employer being the same, and the settlement arrived at between the parties being common, the settlement deed has been produced in IT/20/88 and the learned advocates/representatives of both the sides submitted before me that a consent award in terms of the settlement deed produced in IT/20/88, should also be passed in the present case. I have gone through the settlement deed and have been satisfied that the same is in the interest of the workers working with Party II, and hence I accept the submissions made on behalf of both the parties and pass the following consent award.

ORDER

1. It is agreed between both the parties that the Management of M/s Kamat Real Estate Developers and M/s AVC Investments & Trading Pvt. Ltd., shall increase the wages of all their workpersons by a flat amount of Rs. 100/- per month with effect from 1.1.1988. It is agreed that this increase is over and above the increase of Rs. 100/- per month given to the workperson with effect from 1.1.1988 vide settlement dated 29.2.1988.

2. It is agreed between both the parties that the Management shall further increase the wages of all workpersons by a flat additional amount of Rs. 50/- per month per worker with effect from 1.7.1991.

3. It is agreed between both the parties that the Managements shall further increase the wages of all workpersons by a flat additional amount of Rs. 50/- per month per worker with effect from 1.1.1992.

4. It is agreed between both the parties that the Managements shall further increase the wages of all workpersons by a flat additional amount of Rs. 25/- per month per worker with effect from 1.7.1992.

5. It is agreed between both the parties that the increase of the wages given to workperson of Rs. 100/- per month, vide settlement dated 29th February, 1988 as well as the additional increase of Rs. 100/- with effect from 1.1.1988; the additional rise of Rs. 50/- per month w. e. f. 1.7.91 and Rs. 50/- per month w. e. f. 1.1.92 and Rs. 25/- per month w. e. f. 1.7.1992 shall be treated as F. D. A.

6. It is agreed between both the parties that the Managements shall give to the workpersons of both Hotel Nova and Hotel Golden Goa a bonus of 8.33% for the year 1989-90 on or before 15.10.90.

7. It is agreed between both the parties that both the managements shall give leave facilities each year to their workperson as follows:

Privilege leave of 25 days in a calendar year with a provision of accumulation of PL upto 75 days.

Sick Leave	9 days
Casual Leave	9 days
Holidays	9 days

It is mutually agreed that this leave facility shall be made effective from 1.1.1989.

8. It is mutually agreed between both the parties that this settlement shall be for a period upto 31st Dec., 1992.

9. ARREARS — The arrears accruing out of the settlement shall be paid to each workperson in two instalments after deducting the amounts towards P. F. and E. S. I. S.

The 1st instalment falling due on or before 25.12.90 and the 2nd falling due on or before 31.3.1991.

10. It is agreed between the parties that they shall draw up and finalise the service rules within 2 months from the date of settlement for better efficiency and discipline in the hotels.

11. It is mutually agreed between both the parties that they shall both make a joint application to the Hon'ble Presiding Officer, Industrial Tribunal in IT/20/88 and IT/21/88 with a prayer that the said reference be disposed-off as per the terms of the present settlement.

12. It is mutually agreed between both the parties that the workmen shall extend co-operation to the Management to improve their business and all conditions of service, annual increments and benefits to the workperson which have not been specifically changed shall remain unaltered and applicable.

No order as to costs. Inform the Govt. accordingly.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/14/88-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Joint Secretary (Labour).

Panaji, 16th April, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/22/88

Shri Honu Gaude.	— Workman/Party I
V/s	
M/s Goa Bottling Co. Pvt. Ltd.	— Employer/Party II

Workman represented by Adv. P. J. Kamat.
Employer represented by Adv. B. G. Kamat.

Panaji: Dated : 28-3-91.

AWARD

In exercise of the powers conferred by clause (d) of sub. section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by its order No. 28/14/88-ILD dated 23rd May, 1988 has referred the following issue for adjudication to this Tribunal;

"Whether the action of the management of M/s Goa Bottling Company Private Limited, Corlim Industrial Estate, in terminating the services of Shri Honu Gaude, Driver, with effect from 18th December, 1987 is legal and justified ?

If not, what relief the workman is entitled to ?"

2. On receipt of this reference IT/22/88 was registered and notices were served to both the parties, in response to which the parties appeared before this Court and filed their respective contentions.

3. Party I- Shri Honu Gaude (hereinafter called as workman has filed his claim statement (Exp. 2) wherein he has averred as follows :

Workman-Honu Gaude was employed as a Driver by Party II-Ms Goa Bottling Co. Pvt. (hereinafter called as the 'Employer-Company'), somewhere in the month of June, 1986. He was initially stationed at the Company's factory at Arlem, Margao-Goa where he worked for about 2 months. Thereafter, he was transferred at Marine Products Division at Corlim Industrial Estate. Party II-Company deals in the production of soft drinks of Gold Spot, Thumps Up,

Soda etc., and distributes all over Goa; and also outside the State. The workman was employed as a Driver by the Company and he was driving the vehicle owned by the Company. He was required to transport the manufactured goods of the Company, in and outside Goa. He was drawing a total salary of Rs. 600/- p. m., at the time of termination of his services on 18.12.87. The workman was also paid daily allowance of Rs. 10 while travelling within Goa and Rs. 15 to Rs. 28 while travelling outside Goa depending upon the distance required to be travelled. The Company maintains daily attendance, where the present workman has been shown at Sr. No. 18. It is the say of the workman that he was working in the Factory continuously for a period of more than 1 1/2 years without any adverse remarks; and as such he had a very clean record. However, on 18th December, 1987 the workman was called in the Company's office by the Manager, who asked him to sign two receipts. One was a petty cash voucher and the other was on the letter head of the Company. The Manager told the workman that there was one receipt in respect of payment of Rs. 600/- towards 18 days wages in the month of December, 1987. Secondly he was informed that his services were no more required and as such he was retrenched from 18.12.87. The workman obtained the said two documents which he wanted to show somebody. He got the said documents read over and explained to him and ultimately he was convinced that one voucher was in respect of alleged "Cleaning and overhauling during 18 days of December, 1987" and the other was in respect of "gratis" in full and final settlement of his dues from the Company. Thus, the workman has alleged that he was in fact misled by the Company's Manager in obtaining his signature on the above referred two documents which he did not understand at the time when he signed the same. When the workman found that he was retrenched for no fault of his, he raised a dispute against the company by his letter dated 30-12-87 before the Labour Commissioner at Panaji. The matter was taken up for conciliation. However, Party II-Company did not attend the conciliation proceedings and hence a failure report was recorded ex-parte and thereafter the Government of Goa made this reference for adjudicating as to whether the Company's action in terminating the workman's services was legal and justified ?

4. Party II-Company by its Written Statement at Exb. 3 resisted the workman's claim contending interalia as follows :

It is true that Party II is a Private Limited Company registered under the provisions of the Companies Act, 1956 and it manufactures soft drinks and distributes the same mainly in Goa and even outside Goa. In the year 1985 the Company commenced an undertaking in Fisheries industry at a factory situated at Corlim Industrial Estate, Corlim. This was an undertaking, which was for all practical purposes an independent unit separately registered having independent licence. So far as the employment of persons were concerned this concern had no connection with the factory producing soft drinks. However, this undertaking faced numerous difficulties which ultimately culminated in closing this unit w.e.f. March, 1988. One Mr. Narendra A. Agni was a supplier of shrimps to the new undertaking of the Company. The Company had advanced money to the said supplier. However, Mr. Agni neither supplied the shrimps nor returned the money advanced to him for that purpose. Hence, the company was about to file a suit for recovery of its dues, hence Mr. Agni volunteered to dispose off one of his old truck bearing No. GDS-5076. However he did not succeed in disposing of that truck as the same was not in good condition. However, Shri Agni used to hire the said truck to the company as and when the said truck was in good condition. Ultimately, he sold that truck to a 3rd party.

5. It is the contention of Party II that workman Honu Gaudé was employed by Shri Agni as a driver/cleaner on the said truck bearing No. GDS-5076. He used to visit Corlim factory of the Company as and when the said truck was hired to the Company by Shri Agni. Thus according to the Company, Honu Gaudé was not its employee but he was the employee of Shri Agni. On certain occasions the Company's officials requested Honu Gaudé to do the work of cleaning of company's truck. However, this arrangement was purely on job basis for which the company had paid wages to Honu Gaudé on the basis of the work done by him. Thus, he was not employed by the company continuously for the aforesaid work. Thus, it has been contended that there never existed a relationship between Shri Honu Gaudé and the Company and as such the question of company terminating the services of Shri Honu Gaudé did not arise and it cannot become a subject matter of an industrial dispute between the present parties. Without prejudice to the aforesaid contention, it has been contended that Honu Gaudé's services were not required as the Company's new undertaking at Corlim Industrial Estate was closed forever from March, 1988 and as such even if it is presumed that Shri Gaudé was employed by the Company, still his services would have been terminated in March, 1988 along with the other employees on account of the closure of the undertaking. The Company has denied the workman's contention in para. 1 to 5 of his claim statement and has contended that the company was not aware of any dispute being raised by the workman before the Labour Commissioner. The Company received one notice of conciliation proceedings from the office of the Labour Commissioner, but the Company sent a reply contending that there was no employee by name Honu Gaudé ever employed in its concern. Hence, the company did not attend the so called conciliation proceedings as no industrial dispute ever existed between Honu Gaudé and the Company. Finally, it has been contended that the workman even if he succeeds in this proceeding is not entitled to claim a relief of reinstatement in so far as the Company has closed down its business. On these contentions Party II-Company prays that the present reference be rejected.

6. Party I-Workman has filed his rejoinder at Exb. 4 wherein he has challenged all the contentions taken by the Company in its written statement and has reiterated his assertions made in Exb. 2.

7. On these pleadings, my learned predecessor (Shri S. V. Nevagi) framed the following issues at Exb. 5.

1. Whether Party I, proves that a relationship of employee and employer existed between him and Party II-Goa Bottling Co., as alleged?

2. Whether Party II, proves that an independent Industry with separate licence was started in Fishing and that Narendra Agni who was supplying shrimps to them; agreed to sell his truck No. GDS 5076 to them as alleged?

3. If so, whether Party II further proves that the said Agni had engaged Party I, Honu Gaudé as his Driver-Cleaner on the said truck as alleged?

4. Whether Party II further proves that Honu Gaudé who was Agni's driver was doing some sundry work for them here and there as alleged in para. 6 of the W. Statement?

5. Whether Party I, Honu Gaudé was a workman of Party II whose services were wrongfully terminated by them w. e. f. 18.12.87 as alleged?

6. If so, what relief, if any, is the workman entitled to?

7. What order?

My findings on the above issues are as follows, for the reasons stated below:

1. In the negative
2. In the affirmative
3. In the affirmative
4. In the affirmative
5. In the negative
6. As stated in para 14.
7. As per final order below.

REASONS:

Now, the respective contentions of the parties of this proceeding have been stated in the opening paragraphs of this judgment which need no further repetition. Now, in order to establish his claim Party I-Workman has examined himself at Exb. 6 and he has also led the evidence of two more witnesses namely Vinayak Dessai (Exb. 11) and B. V. Naik (Exb. 12), and has produced some documents. On behalf of Party II-Company its General Manager D. G. Borkar has examined himself at Exb. 13 and he has also produced several documents. Now, before proceeding to consider the respective contentions of the parties to these proceedings, I think it necessary to state in brief some of the facts which are either admitted or which are otherwise taken as duly proved.

8. Now, Party II-Goa Bottling Co. Pvt. Ltd., is a company registered under the provisions of the Companies Act and the said company deals with the production of soft drinks such as Gold Spot, Thumps Up, Soda etc., However, in the year 1985 the company undertook Fisheries Industry at a factory situated at Corlim Industrial Estate, Corlim. This was, according to the evidence of Shri Borkar a new undertaking which was practically independent unit which was separately registered and was having an independent licence. The workers in this undertaking had no connection with the factory of Goa Bottling Co., which used to produce soft drinks. Now, it is a common ground that this Marine Products Division situated at Corlim was closed down in the month of March, 1988. The evidence on record also discloses that one Shri Agni was a sub-contractor of this Marine Products Division who used to supply shrimps to this industry. He had a truck bearing No. GDS 5076. He was given some advance which he was unable to repay and hence he disposed off the above referred truck in favour of one third party. Now, according to Party II-Company, the workman by name Honu Gaudé was the employee of Shri Agni, who was driving the truck No. GDS-5076. However, he used to visit the factory at Corlim and when his truck was not hired the company used to ask him to do the cleaning and overhauling of company's vehicles for which he was paid Rs. 600/- p. m. However, in so far as the Marine Division at Corlim was closed down in March, 1988 the services of Party I-Workman were

terminated and although he was offered unpaid salary and compensation still he did not accept the same and eventually he raised a dispute before the Labour Commissioner where no settlement was arrived at and hence the matter was referred to Government who eventually referred the dispute to this Tribunal for adjudication.

9. Now, the only question that arises for determination in this proceeding is whether Party I-Workman was employed by Goa Bottling Co. Pvt. Ltd., in its soft drinks factory at Raia Margao or whether he was employee of Shri Agni whose services were occasionally made available to the Marine Products Division at Corlim. Now, it is the say of the workman Honu Gaude that he first joined the services of Goa Bottling Co. Pvt. Ltd., in June, 1986 as a driver. According to him he was initially appointed in Limca factory at Arlem, Margao, Goa and after two months he was transferred to the Marine Products Division of the same factory at Corlim, Goa. He has also examined two witnesses namely Vinayak Dessai (Exb. 11) and B. B. Naik (Exb. 12). They have also attempted to state that Honu Gaude was serving with them at Corlim factory. Now it has been urged by Shri P. J. Kamat, the learned Advocate for the workman that several statements made by the workman in his examination in chief have not been seriously challenged by the learned Advocate for the Company and on the footing of this submission he has urged that the workman's allegation should be held as substantially proved. However, it is difficult to subscribe to these arguments in as much as the observance of strict rules of pleadings and evidence is nowhere contemplated in proceedings under the Industrial Disputes Act. What we have to find out is to see whether there is any cogent and convincing evidence in proof of the workman's assertion that he was first appointed as a driver in the soft drinks factory of M/s Goa Bottling Co. Pvt. Ltd., Raia, Margao, Goa.

10. Now, it has been rightly urged by Shri B. G. Kamat, the learned Advocate for Party II, that Goa Bottling Co. Pvt. Ltd., which produces soft drinks is a big concern and if Honu Gaude was really employed in the said factory then in the normal course of events there would have been a written letter of appointment or an order in his favour issued by the Company. However, it is an admitted fact that there is no such letter of appointment or any other documentary evidence to prove that Honu Gaude was first appointed in the soft drinks factory. Secondly, it is the say of H. Gaude that after working for about a couple of months in soft drinks factory he was transferred to the Marine Products Division at Corlim. This assertion of his also does not find any corroboration in any documentary evidence. Had it been a case then in normal course of events the Company would have issued the written order showing the transfer of Honu Gaude from soft drinks factory to Marine Products Division at Corlim. Thus, considering this state of affairs it is impossible to subscribe to the workman's assertions that he was first employed at Goa Bottling Co., where he worked for two months and thereafter he was transferred to the Marine Products Division at Corlim.

11. Now, the evidence of Shri Borkar discloses that after the Marine Products Division at Corlim was established at Industrial Estate, Corlim, the Company entered into contracts with fish suppliers for raw materials. Shri Narendra Agni was one of such contractor and he was owning a goods truck bearing No. GDS-5076. He has also produced the original certificate under the Motor Vehicles Act at Exb. 15. Now, it is the say of Borkar that Honu Gaude was serving as a driver on the aforesaid truck and he was bringing the products in the old Company. However, whenever he had no work of transporting, he was asked to do some cleaning work in the factory for which he was being paid Rs. 600/- p. m. Now, Shri Borkar has also

produced the registration certificate at Exb. 14, and agreement at Exb. 22, the contents of which substantially support his assertions. His evidence further reveal that since Shri Agni was unable to pay the advance obtained by him from the Company he decided to dispose off the above referred truck in favour of third Party.

12. On considering the entire evidence of Shri Borkar which finds support in the documentary evidence I find that the same deserves to be accepted in preference to the stray allegation made by Shri Honu Gaude for showing that he was initially appointed by Goa Bottling Co. Pvt. Ltd., Now, Shri B. G. Kamat has also invited my attention to one more circumstance which has a considerable relevance in dislodging the claim made by the workman. Shri Kamat has relied upon a letter written by Honu Gaude on 30.12.87 to M/s Goa Bottling Co. Pvt. Ltd., Marine Products Division, Corlim (underlining is mine for emphasis). At the beginning of this letter Shri Honu Gaude has stated thus :

" I am working in your factory as a driver for the last about 1.6 years."

Thus, reading the aforesaid admission appearing in his letter it has been rightly urged by Shri B. G. Kamat that in view of the above referred admission no further proof would be required to show that Honu Gaude was employed in or about June, 1986 in the Marine Products Division at Corlim Industrial Estate, Corlim. This letter, according to Shri B. G. Kamat, fully disproves the claim made by Shri Honu Gaude that he was initially employed at Raia, Margao and that he was transferred to Corlim Industrial Estate after about two months. Thus, relying on the aforesaid state of affairs it has been rightly contended by Shri B. G. Kamat that the claim now put forth by Shri Honu Gaude was an after thought which does not find place in the earliest document namely the letter written by him to the Marine Products Division. Now it has been further urged and rightly in my view that workman Honu Gaude invented this theory for the first time in his Claim statement after he found that the Marine Products Division at Corlim was closed down in the month of March, 1987. In as much as the said Unit was closed there was no possibility of Honu Gaude's reinstatement and hence he seems to have ingeniously invented the theory that he was initially employed at Goa Bottling Company Private Limited, Raia, Margao, Goa.

13. Thus, on considering the entire evidence in the light of the submissions made by the learned Advocates for both the sides, I have come to an irresistible conclusion that Party I-Workman has miserably failed to prove that he was the employee of Party II-M/s Goa Bottling Co. Pvt. Ltd., Raia Margao and that he was subsequently transferred to the Marine Products Division, Corlim. The evidence on record further reveals that Shri Agni was owning a truck bearing No. GDS-5076 which Honu Gaude was driving. The said truck was subsequently disposed off by Shri Agni. Shri Honu Gaude was rendering petty services to Goa Bottling Company for which the Company used to pay some Rs. 600/- per month. However, after the Marine Products Division was closed the Company had to discontinue the services of Honu Gaude which it did in the month of December 1987. In view of these conclusions, I answer issue No. 15 in the negative and issue Nos. 2, 3, and 4 in the affirmative.

14. After having concluded the above, the next question that remains to be considered as to whether the Party I workman is entitled to any monetary benefits. Now, the evidence on record discloses that when the workman was retrenched he was paid an amount of Rs. 360/- as his salary for 18 days in the month of December, 1987. He accepted the said amount as can be seen from the receipt at Exb. 8. He was also offered Rs. 600/- as grati in full and final settlement of all his dues with the Company. However, he did not sign this receipt as can be seen from Exb. 9 (w). Thus, it is obvious that he did not receive Rs. 600/-. Now, I have already concluded on the basis of the

evidence led before me that Marine Products Division was closed in the month of March, 1988. In view of the state of affairs it follows that the workman would be entitled to receive his pay till the concern was closed i.e. from 19.12.87 till the end of March, 1988. This amount comes to Rs. 2,400/- minus 360/- (as already paid to the workman). He will also be entitled to one month's notice pay which comes to Rs. 600/- and gratuity of 1 1/2 months which comes to Rs. 450/-. Thus, in all Party I would be entitled to receive Rs. 3,090/- as monetary benefit in full satisfaction of his claim.

I, therefore answer the issue No. 6 accordingly and pass the following order :

ORDER

It is hereby declared that Party I-Honu Gaude is not entitled to claim relief of reinstatement. Instead Party II-M/s Goa Bottling Co. Pvt. Ltd., Margao, Goa, is hereby directed to pay a sum of Rs. 3,090/- (Rupees three thousand ninety only) in fully satisfaction of the workman's claim, on or before 30th June, 1991 failing which Party I would be entitled to recover future interest at 10% from 1.7.1991 till the entire amount is released.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/27/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.
Subhash V. Elekar, Joint Secretary (Labour),
Panaji, 19th April, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/29/90

Shri Sandesh Kholkar — Workman/Party I
V/s

Shri Anand S. Redkar — Employer/Party II

Workman represented by Shri Raju Mangueshkar.

Panaji: Dated : 27.3.1991.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14

of 1947), the Government of Goa, by its order No. 28/27/90-LAB dated 28th June, 1990 has referred a dispute between the above referred parties for adjudicating as to whether Party I Sandesh Kholkar is a workman and whether his services were wrongfully terminated by Opponent-Shri Anand S. Redkar. On receipt of this reference a case at IT/26/90 was registered and the notices were sent to both the parties. In response to the show cause notice Party I-Sandesh Kholkar appeared in this Court and submitted his statement of claim wherein he has averred thus :

2. Party II-Shri Anand S. Redkar (hereinafter called as Employer) is a owner and Proprietor of a Hair Dressers Shop styled as Redkar Hair Dressers at Margao, Goa. Party I Shri Sandesh Kholkar (hereinafter called as 'Workman') was appointed as a Hair cutter sometime in Feb., 1986. According to the workman he was doing his duties satisfactorily and had a very clean record. However on 18th Feb., 1990 the employer levelled certain allegations against the workman alleging that his conduct or behaviour was not good and hence his services were terminated forthwith. At the time of his termination, the workman was not paid his legal dues nor was he served with a proper notice of termination. As the action of the employer was un-justified and illegal the workman raised an industrial dispute before the Dy. Labour Commissioner, Margao. However, there was no settlement and hence the matter was referred to the Govt. who in its turn referred the following issues for adjudication by this Tribunal in view of the provisions contained in Sec. 10 (1) (d) of the I. D. A., 1947.

1. Whether Shri Sandesh Kholkar, Hair Dresser of Shri Anand S. Redkar, Prop. Hair Dressers Shop, Margao, is a workman under section 2 (s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?

2. If so, whether the action of the employer Shri Anand S. Redkar, Prop. Hair Dressers Shop, Margao, in terminating the services of Shri Sandesh Kholkar, Hair Dresser, with effect from 18.2.1990 is legal and justified?

3. If the answer to (2) above is negative, to what relief the workman is entitled ?

My findings on the above issues are as follows for the reasons stated below :

1. In the affirmative.
2. In the negative.
3. As stated in para. 6.

REASONS

As stated above, after the case was registered a notice was sent to the Party II-Employer calling upon him to appear in Court on 10-12-90. However, the said notice was returned to this Tribunal with an endorsement "Not claimed". Hence on 10.12.90 there was no appearance on behalf of the employer. Hence, I again directed to issue a fresh notice returnable on 18.1.91. Although the notice was promptly sent still its postal A. D. was not received on 18.1.91 and

hence the case was adjourned to 25.1.91. On 22.1.91 the registered packet containing the notice was returned to this Tribunal with an endorsement "Not found on two attempts" hence on 25.1.91 I again directed to issue a final notice returnable on 9.2.91. Accordingly, the notice was sent by registered post but neither the postal A. D. receipt nor a packet containing the notice was returned to this Tribunal. However on 11.2.91 the packet containing notice was returned by the postal authorities with an endorsement "Not claimed". In view of this state of affairs and regard being had to the provisions contained in Rule No.10-B sub-clause 9 of Industrial Disputes Rules 1957 I ordered ex-parte hearing to be commenced on 25.3.91.

4. On the date of hearing the workman by name Sandesh Kholkar led his own evidence at Exb. 3 wherein he has stated that he was serving with Party II in his Hair Cutting Saloon since 1.1.86. He was paid Rs. 35/- per day. He has also produced a certificate showing that he joined the services on 1.1.86. It is at Exb. 4 which has been issued by Shri Redkar for Redkar Hair Dressers and it clearly states that Sandesh D. Kholkar was working in Redkar Hair Cutting Saloon from 1st Jan., 1986 to 31st July, 1988. It has been also certified that he is conversant with gents haircut and is a devoted worker. The workman has further stated that on 18.2.90 the employer asked him not to join but no notice in writing was given. Hence he raised the dispute before the Labour Commissioner. A representation in that behalf can be found at Exb. 5. Party II was also called for discussion and he also participated in those proceedings by filing his reply. However, there was no settlement and hence the Government referred the dispute between the parties to this Tribunal.

5. Now, as I have stated earlier although ample opportunities were given to Party II-Employer still he did not bother to appear before this Tribunal and to raise any dispute in regard to the claim made by the workman. Now, whatever has been stated by the workman is fully borne out by the documentary evidence at Exb. 4 and Exb. 5, to which a reference has also been made herein before. Now, whatever has been stated by the workman has gone unchallenged. If the employer had any defence to make then I think he would not have normally failed to appear before this Tribunal and to challenge any of the ascertions made by the workman. In view of this state of affairs, there is no reason why the unchallenged word of the workman, which is corroborated by the documentary evidence referred to above, should not be accepted in proof of his assertions.

6. The evidence of the workman clearly discloses that he was employed by Party II as a Hair Cutter or a Barber on payment of Rs. 35/- per day. This fact is also born out by the certificate at Exb. 4. This clearly shows that there was a relationship of a master and servant between Party II and Party I. He was also paid fixed daily wages at the rate of Rs. 35/-. Thus, considering this evidence, I hold that Party I was a workman as defined in Sec. 2 (s) of the Industrial Disputes Act and I further hold that his services were wrongfully terminated by his employer w. e. f. 18.2.90. In view of these conclusions it follows that the workman would be entitled to a relief of reinstatement with full back wages from the date of his retrenchment. I, therefore answer the above referred issues accordingly and pass the following order.

ORDER

It is hereby declared that the services of Party I-Shri Sandesh Dattaram Kholker, Hair Dresser, were wrongfully or illegally terminated by Party II-Shri Anand S. Redkar and hence Party II is hereby directed to reinstate Party I in service and shall pay him full back wages and other legal dues due to him.

No order as to costs. Inform the Government accordingly about the passing of the award.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order
No. 28/71/90-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Joint Secretary (Labour).

Panaji, 16th April, 1991.

IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/8/91

Shri Appaji M. Zende — Workman/Party I
V/s
M/s Kay Pee Steel Pvt. Ltd. — Employer/Party II

Panaji, Dated : 19.3.1991.

ORDER

The Government of Goa, by its order No. 28/71/90-LAB dated 11-1-1991, under the provisions contained in section 10 (1) (d) of the Industrial Disputes Act, 1947, has referred the following issues for adjudication by this Tribunal;

1. "Whether the action of the management of M/s Kay Pee Steels Pvt. Ltd., Tisk-Usgao, Ponda-Goa, in terminating the services of Shri Appaji M. Zende Electrician, w. e. f. 12-1-90 is legal and justified?
2. If not, to what relief the workman is entitled ?"

2. On receipt of this reference a case at IT/8/91 was registered and the notices were sent by registered post to both the parties. The notices were duly served and received by both the parties as can be seen at Exb. 3 and Exb. 4. Under the said notice, the parties were called upon to remain present before this tribunal on 18-3-91.

3. However, on the date of hearing i.e. 18-3-91, Party I, was not personally present. However, he has sent one letter which has been duly received and admitted in evidence at Exb. 5. A representative on behalf of Party II-M/s Kay Pee Steels Pvt. Ltd., was present and he submitted 5 documents which are at Exb. 6 to Exb. 10.

4. Party I, A. M. Zende, by his letter dated 12-2-91 has informed the Court that he has settled his claim with Party II, had obtained his legal dues and hence he was requested that the case should be disposed of as closed. A copy of this letter was also sent to Party II which has been produced at Exb. 10.

5. Party II, has produced one letter at Exb. 6, wherein it has been stated that the claim of Party I, has been settled and he has been paid Rs. 2,354.50 (Rupees two thousand three hundred fifty four and paise fifty only) in full satisfaction of his claim. Exb. 7 is a receipt passed by Party I, in favour of Party II, acknowledging the receipt of Rs. 2,354.50 Exb. 8 is a copy of the letter dated 3-12-90 sent by Party I to the Director of Party II, wherein he has intimated the Director that he is ready to accept full and final amount and will not proceed with the Court case. Lastly Exb. 9 is a letter sent by Party II to the Asst. Labour Commissioner stating therein that Party I is entitled to a compensation of Rs. 354.30.

6. Thus considering all these documentary evidences, it is abundantly clear that Party I has settled his claim with Party II, out of court and hence both the parties do not wish to proceed with the case. In view of the state of affairs, the reference stands disposed off with no order as to costs.

The Government be informed accordingly about the passing of the order.

(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/22/87 - LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 3rd May, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/3/90

Shri Ramesh R. Madgaonkar — Workman/Party I
v/s

M/s Kadamba Transport Corporation
Limited. — Employer/Party II

Workman represented by Adv. S. Sonak

Employer represented by Shri P. K. Lele.

Panaji: Dated: 19-4-1991.

A W A R D

In exercise of the powers conferred under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by its order No. 28/22/87-LAB dated 11th January, 1990, has referred the following issues for adjudication by this Tribunal:

"Whether the action of the management of M/s Kadamba Transport Corporation Limited, Panaji, in dismissing the services of Shri Ramesh R. Madgaonkar, Driver, with effect from 8-8-86 is legal and justified?

If not, to what relief the workman is entitled?"

2. The case of the above named Party I-Workman is in short to the effect that he was appointed as a driver since 1981 by Party II - M/s Kadamba Transport Corporation Limited, Panaji, Goa. However, in the year 1984 the Corporation charge sheeted him for certain alleged misconducts and after holding a departmental enquiry terminated his services w. e. f. 8-8-86. Feeling aggrieved by this action of the Corporation the workman raised an industrial dispute wherein he challenged the Corporation's action. Thereafter the Government of Goa by the above mentioned order referred the above issues for adjudication by this Tribunal.

3. On receipt of this reference IT No. 3/90 was registered and notices were issued to both the parties. In response to the said notice Party I - Workman appeared and filed his claim statement which is at Exb. 2. Party II- Corporation by its written statement Exb. 3 resisted the claim made by Party - I and thereafter Party I filed his rejoinder which can be found at Exb. 4. On these pleadings, the necessary issues were framed at Exb. 5 and the case was posted for hearing.

4. However, at the time of hearing it was submitted by the learned advocates of both the sides that there was every possibility of a settlement being arrived at and hence the case was adjourned. Eventually on this day, both the parties appeared before me and submitted that they have arrived at a settlement and accordingly they submitted the terms of settlement which can be found at Exb. 9. The

parties have prayed that in view of the settlement a consent award be passed in terms of the Exb. 9. I have gone through the terms of settlement and found that they are certainly beneficial to the workman, who was previously discharged and hence I accept the submission made by the learned advocates for both the parties and pass the following order in terms of settlement.

ORDER

1. It is hereby ordered that Party II - M/s Kadamba Transport Corporation Limited, Panaji, Goa, shall appoint Party I - Shri R. Madgaonker, as a regular employee in the category of Drivers w. e. f. 24th April, 1991.

2. In consideration of the opportunity given to him to appoint in the Corporation, Shri Ramesh R. Madgaonker agrees that he has now no dispute against the Corporation in respect of his previous employment in the Corporation. Shri Ramesh R. Madgaonker undertake to abide by the rules and regulations of the Corporation.

3. This settlement settles all the matters and issues involved in this reference.

No order as to costs.

Inform the Government accordingly about the passing of the award.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/30/86 - LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Under Secretary (Labour).

Panaji, 3rd May, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

No. IT/28/86

Workmen	— Party I/Workman
v/s	
M/s East Quepem V. K. S. S. Society	— Party II/Employer
Employer/Party II represented by Adv. B. Palha.	
Panaji: Dated: 18-4-91	

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Lieutenant Governor of Goa, Daman and Diu by his order No. 28/30/86-ILD dated 30th Sept., 1986, referred the following issues for adjudication by this Tribunal:

"1. What should be the pay structure of different categories of workmen employed by M/s East Quepem V. K. S. S. Society Limited, Curchorem, Goa?

2. To what extent the revision of pay scales of these workmen should be done and from what date the same should be implemented?"

2. On receipt of this reference on 6-10-86 a case at IT/26/86 was registered and thereafter the notices were served on both the parties, in response to which the Party I - Workman appeared and submitted his statement of claim which can be found at Exb. 2. Party II - Employer resisted the claim made by Party I, by filing his written statement which is at Exb. 3. Thereafter, Party I also filed rejoinder which is at Exb. 4. On considering the pleadings, my learned Predecessor framed the necessary issues at Exb. 5, on 6-1-89.

3. Thereafter, the matter was posted for hearing on several dates till my learned Predecessor retired in the month of July, 1990. Hence the case was kept on sine die list. After I took over, the case was taken up before me on 12-10-90 and was fixed for evidence or for settlement as previously suggested by the Parties. On 19-11-90 there was no appearance either of Party I or on behalf of Party II, although both the parties had previously noted the date. Hence the notices were again served calling upon them to appear on 17-12-90. On that day there was no appearance on behalf of Party I-Workmen but Party II-Employer was represented by Shri A. A. Jog. However, he withdrew his vakalatnama and hence a notice was served to Party II. On 19-3-91 when the case was posted for hearing there was no appearance on behalf of the workman but Adv. T. Pereira on behalf of Adv. Palha appeared on behalf of the employer and he submitted that the matter was likely to be settled. Hence it was kept for settlement on 25-3-91. However, on 25-3-91 there was no appearance on behalf of the workman although Adv. Palha appeared and submitted that there was no possibility of settlement and hence the case was posted for evidence on 16-4-91. However, on this date i. e. 16-4-91 there was no appearance on behalf of the workmen although Adv. Palha was present.

4. Thus, after going through the roznama and record of the proceedings, it clearly seems to be that Party I-Workmen did not appear to be anxious or serious in adducing evidence in proof of several issues which have been framed at Exb. 5 by my learned Predecessor. The entire burden of proving the several issues in support of their claim was obviously upon the workmen. However, as I have stated earlier there was no appearance on behalf of Party I-Workmen on the previous several dates and on the date of actual hearing which was kept on 16-4-91.

5. In view of the state of affairs and regard been had to the provisions contained in sub-rule (9) of Rule 10 of the Industrial Disputes

Rules 1957, the only course now open for me is to dismiss this reference for the default of workmen in adducing any evidence in proof of their claim. I, therefore, dismiss this case for default and pass the following order:

ORDER

The case dismissed for default of Party I-Workmen with no order as to costs.

The Government be informed accordingly about the passing of the order.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No. 28/60/86 - LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa
Subhash V. Elekar, Joint Secretary (Labour).
Panaji, 3rd May, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/68/89

Shri Putu N. Dessai — Workman/Party I
v/s
M/s Kadamba Transport Corporation Ltd.— Employer/Party II
Workman represented by Adv. S. Sonak.
Employer represented by Shri P. K. Lele.

Panaji: Dated: 19-4-1991

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa by its order No. 28/60/86-LAB

dated 14th September, 1989, has referred the following issues for adjudication by this Tribunal:

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd., in dismissing the services of Shri P. N. Dessai, Conductor, with effect from 3-1-1986 is legal and justified.

If not, to what relief the workman is entitled?"

2. The case of the above named Party I-Workman is in short to the effect that he was appointed as a Conductor since 1982 by Party II-M/s Kadamba Transport Corporation Limited, Panaji, Goa. However, in the year 1984 the Corporation charge sheeted him for certain alleged misconducts and after holding a departmental enquiry terminated his services w. e. f. 3-1-1986. Feeling aggrieved by this action of the Corporation the workman raised an industrial dispute wherein he challenged the Corporation's action. Thereafter the Government of Goa by the above mentioned order referred the above issues for adjudication by this Tribunal.

3. On receipt of this reference IT No. 68/89 was registered and notices were issued to both the parties. In response to the said notice Party I-Workman appeared and filed his claim statement which is at Exb. 2. Party II-Corporation by its written statement Exb. 3 resisted the claim made by Party I and thereafter Party I filed his rejoinder which can be found at Exb. 4. On these pleadings the necessary issues were framed at Exb. 5 and the case was posted for hearing.

4. However, at the time of hearing it was submitted by the learned advocates of both the sides that there was every possibility of a settlement being arrived at and hence the case was adjourned. Eventually on this day, both the parties appeared before me and submitted that they have arrived at a settlement and accordingly they submitted the terms of settlement which can be found at Exb. 9. The parties have prayed that in view of the settlement a consent award be passed in terms of Exb. 9. I have gone through the terms of settlement and found that they are certainly beneficial to the workman who was previously discharged and hence I accept the submission made by the learned advocates for both the parties and pass the following order in terms of settlement.

ORDER

1. It is hereby ordered that Party II-M/s Kadamba Transport Corporation Limited, Panaji, Goa, shall appoint Party I-Shri P. N. Dessai as a regular employee in the category of conductors w. e. f. 24th April, 1991.

2. In consideration of the opportunity given to him to appoint in the Corporation. Shri P. N. Dessai agrees that he has now no dispute against the Corporation in respect of his previous employment in the Corporation. Shri P. N. Dessai undertake to abide by the rules and regulations of the Corporation.

3. This settlement settles all the matters and issues involved in this reference.

No order as to costs.

Inform the Government accordingly about the passing of the award.

M. A. Dhavale
Presiding Officer
Industrial Tribunal

Order

No. 28/51/89-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central act XIV of 1947).

By order and in the name of the Governor of Goa.

Subhash V. Elekar, Joint Secretary (Labour).

Panaji, 17th July, 1991.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/74/89

Workmen — Workmen/ Party I
v/s
M/s. Kamat Industries —Employer /Party II

Workmen represented by Shri R. Mangueshkar

Employer represented by Shri B. G. Kamat, Advocate

Panaji: Dated: 28.6.991

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by its order No. 28/51/89-LAB dated 26th September, 1989; has referred the following dispute for adjudication.

" Whether the following demands raised by the workmen represented by the Goa Trade and Commercial Worker's Union on the management of M/s Kamat Industries, Sancoale, are justified?"

2. On receipt of this reference, notices were issued to both the parties and in response thereof both the parties appeared and submitted their respective claims. Party I are the workers of Party - II M/s Kamat Industries and they raised a dispute claiming certain demands including :

1. Flat rise in pay scales, 2. Variable Dearness Allowance, 3. House Rent Allowance, 4. Travelling Allowance, 5. Uniforms and Washing Allowance and 6. Leave facilities.

3. Party II- M/s Kamat Industries by its Written Statement at Exb. 3 resisted the workmen's claim contending interalia that the union which has raised this dispute has no locus standi to sponsor a dispute and that this Court has no jurisdiction to decide the reference made by Government of Goa. It has also been contended that on

account of continuous heavy losses as well as paucity of orders for its products, Party II was forced to close its establishment w.e.f. 13th Nov., 1990 and hence it terminated the services of all the workmen on tendering to them their legal dues. It was therefore submitted that in view of the closure of the establishment the present reference does not survive for adjudication.

4. Party I then submitted its rejoinder at Exb.4, wherein it reiterated its claim made in Exb. 1 and contended that the contentions taken by Party II are not true.

5. On these pleadings the parties went on trial on the issues which were framed at Exb. 5 and then the matter was posted for hearing.

However, in the meantime, it was submitted by the representatives of both the parties that there was a possibility of an amicable settlement between the parties and hence the parties sought some adjournments. Finally, the parties arrived at a settlement and accordingly on 27th June, 1991, both the parties submitted the terms of settlement and requested the Tribunal to pass an award in terms of the settlement.

6. At the time of tendering the settlement deed, it was submitted before me that Party II - M/s. Kamat Industries closed its Unit at Sancoale Industrial Estate w.e.f. 13.11.90. However, the union raised a dispute and contended that the management locked out the workmen illegally. Thereafter Party- II employer sought the intervention of the Labour Commissioner and the matter was discussed in his office on several occasions. Finally, the parties arrived at a settlement on certain terms and conditions which have been filed in this case at Exb.7. On submission of the terms of settlement it has been submitted by both the sides that in view of this settlement the Tribunal should be pleased to pass an award in terms of this settlement. After having perused the terms of settlement, I am satisfied that they are certainly in the interest of the workmen and hence a consent award need be passed in this reference. I, therefore pass the following consent award.

ORDER

1. It is agreed between the parties that the Industrial Unit run by the management of M/s Kamat Industries is deemed to have closed irrevocably with effect from 13.11.1990.

2. The management agrees to pay retrenchment compensation, gratuity on prorata basis, earned wages for the months of October, November, 1990 upto 12-11-90, notice pay, leave salary and ex-gratia amount, equivalent to 6 months salary to the workmen affected closure on or before 31.3.91. A chart showing the dues payable to the workman is enclosed as Annexure ' A ' to the settlement memo.

3. It is agreed between the parties that industrial dispute in respect of Charter of Demand and payment of back wages and continuity of services (No. IT/74/89) pending before the Industrial Tribunal, Panaji, stand fully and finally settled.

4. The employer shall issue bonafide service certificates to the workmen.

5. In view of the foregoing clauses, the union and the workmen agree that all their disputes with the employer, M/s Kamat Industries are conclusively settled and that they shall have no claim of whatsoever nature against the said employer.

No order as to costs. Inform the Government accordingly about passing of the award.

Sd/-
(M. A. Dhavale)
Presiding Officer
Industrial Tribunal

Order

No.28/21/87-LAB

The following Award given by the Industrial Tribunal, Goa, Daman and Diu is hereby published as required under the provisions of Section 17 of the Industrial Dispute Act, 1947 (Central Act XIV of 1947).

By order and in the name of the Governor of Goa
Subhash V. Elekar, Joint Secretary (Labour).
Panaji, 17th July, 1991.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri M. A. Dhavale, Hon'ble Presiding Officer)

Ref. No. IT/53/57

Shri Vinayak S. Jalsai — Workman /Party I
V/s

M/s. Naresh Wooden Industries — Employer /party II

Workman represented Adv. A. Halarnekar.

Panaji: Dated :28.6.91.

In exercise of the powers conferred by clause (d) of sub-sec. (1) of Section 10 of the Industrial Disputes Act, 1947 the Government of Goa, by its No. 28/21/87-ILD dated 12th August, 1987, has referred the following issue for adjudication by this Tribunal.

" Whether the action of the management of M/s Naresh Wooden Industries, Mardol in terminating the services of Shri Vinayak S. Jalmi with effect from 26-5-1986 is legal and justified.

If not, to what relief the workman is entitled to ? "

2. On receipt of this reference a case at serial no. IT/53/87 was registered and notices were issued to both the parties. In response to the show cause notice, Party I-Vinayak S. Jalmi (hereinafter called as ' Workman ') filed his claim statement (Exb. 2) wherein he has contended thus :

The workman was employed as Mistry at Party II- M/s. Naresh Wooden Industries, Mardol, Goa (hereinafter called as ' Employer ' , w.e.f. 9-1-1992 on a monthly salary of Rs.450/- . In the year 1983, the workman's salary was raised to Rs. 510/- and thereafter to Rs. 600/- p. m. Finally, in the year 1985 his salary was

raised to Rs.800/- p.m. The salary was increased from time to time because according to the workman his performance was very good. However, it has been stated that the employer was most irregular in paying the monthly salary from 9-1-82 to 1-5-86. According to the workman, he has calculated the arrears totalling to Rs. 4939.00, the particulars of which have been stated in para. 3 of Exb. 2. It has been further stated that although the workman made several requests for payment of arrears still the employer did not pay any heed and finally on 26-5-86 the employer illegally terminated the services of the workman without assigning any cause and without complying with the mandatory provisions laid down in Sec.25-F of the Industrial Disputes Act, 1947. No written order of termination was passed nor was there any notice, nor any payment of arrears and legal dues and hence it has been contended that the order of termination is illegal and void ab-initio. Hence, it has been prayed that the said order be quashed and relief of reinstatement with back wages and arrears be granted to the workman.

3. Party II - Employer by his written statement at Exb. 6 resisted the workman's claim contending inter alia that although it is true that the workman was employed from 9-1-82 still it is not correct that his initial salary was Rs. 450/- p.m. On the other hand, he was employed on a monthly salary of Rs. 300/- . It is denied that from time to time the employer increased the workman's pay as alleged by him in Exb.2. It has been contended that after having worked for about a year and after having gained the necessary experience in carpentry work, the workman started taking carpentry jobs separately on his own and was doing the said work by remaining absent in the workshop of the Employer. That act on the part of the workman adversely affected the business of the Employer. It is denied that the workman was not paid regularly and that an amount of Rs. 4939.00 is outstanding towards the arrears of pay. On the other hands, it has been contended that the workman was in a habit of obtaining advances which have been recorded in the employer's record and hence it has been contended that the employer is not liable to pay anything to the workman. Due to the detrimental acts of the workman, the employer lost all confidence in the workman and he appointed one more person to supervise the work of this workman. However, the workman did not like this act on the part of the Employer and hence he did not turn up for work w.e.f. last week of May, 1986. It has been finally contended that the provisions of Sec. 25-F are not applicable to this case and hence it has been prayed that the workman's claim be rejected.

4. Party I, by its rejoinder at Exb. 7, reiterated his claim made in Exb. 2 and contended that the contentions taken by Party II- Employer are not true and that he should be given the reliefs claimed by him.

5. On these pleadings my learned Predecessor, Shri S. V. Nevagi, framed the following issues at Exb. 8.

1. Whether Party II -Employer proves that the workman Party I was employed in January 1982 at the salary of Rs. 300/- per month and that too as a helper and not Mistry as alleged?

2. If so, whether Party II further proves that the workman voluntarily abandoned the service by leaving the job at the end of May 1986 as alleged?

3. Whether Party II proves that the habit of the workman in taking private jobs of carpentry and diverting the clientele to himself resulted in the closure of the concern in June 1986 as alleged?

4. Whether the action of the management amounts to retrenchment with the meaning of Section 25 (F) of the Industrial Dispute Act, 1947 as alleged ?

5. If so, what reliefs, if any is the workman entitled to?

6. My findings on the above issues are as follows for the reasons stated below:

1. In the negative.
2. In the negative.
3. In the negative.
4. In the affirmative.
5. As stated in para. 13

REASONS:

7. Regard being had to the pleadings of the parties, my learned Predecessor framed the necessary issues at Exb.8 which have been reproduced above. Now, the entire burden of proving the first three issues which were framed on the basis of the contentions raised by the employer, was obviously upon the employer. However, at the outset, it will have to be stated that the employer did not care to step into the witness box or to lead any other evidence in proof of his contentions. This proceeding has a very chequered history which needs to be reproduced in brief.

8. In this case the workman was represented by Adv. A. Halarnekar while the employer has engaged Adv. P. J. Kamat. The case was adjourned on 3 to 4 occasions for recording of evidence and finally on 21-12-88 the workman examined himself and he examined two witnesses. In fact when the entire burden was cast upon the employer it was incumbent upon him to lead evidence in the beginning. However, as I have stated earlier instead of the employer leading his evidence, the workman proceeded to lead his evidence on 21-12-88 and on 3-2-89 he examined two witnesses. Thereafter the case was posted for further evidence. However, on 10-3-89 it was submitted on behalf of the workman that he had no other evidence and hence the case was posted for the employer's evidence on 5-4-89. On that day Adv. P. J. Kamat withdrew his vakalatnama and hence Court directed to issue notice to the employer fixing the returnable date on 20-5-89. The employer appeared and sought an adjournment praying that he wants to engage some other Advocate. That was granted and the case was posted for hearing on 12-7-89. On this adjourned date the employer submitted an application stating therein that he wanted to compromise the matter and hence prayed one month's time. It was granted and the case was posted on 22-8-89. However, on that date the employer was absent and hence my learned Predecessor passed an order to this effect, "As the Employer is absent his evidence is treated as closed. Fixed for arguments. Court directs to inform the employer that the matter is kept for arguments on 27-9-89." On 27-9-89 the employer was present in person and he submitted that the matter was likely to be settled and hence on that ground he sought an adjournment. It was granted and the case was fixed for arguments on 15-11-89. On that day the employer again sought an adjournment which was granted and the case was posted on 27-12-89. On that day also the employer was personally present and he prayed for two months' time for settlement. His request was granted and the case was fixed on 14-3-90. On that date also the employer who was personally present again requested the Court that the matter was likely to be settled and hence he sought an adjournment which was granted and the case was posted on 2-5-90. On that date the employer was absent. On 3-5-90 the employer sent a telegram stating that he is indisposed and hence he did not attend the Court on 2-5-90. On 17-5-90 the workman was present but the employer was absent. Hence on the request of the workman the case was adjourned to 14-6-90. Thereafter the case could not be heard as my learned Predecessor had retired. The case came up before me on 5-6-91 on

which date I directed the office to issue notices. Accordingly, notices were issued but the notice sent to the employer was returned with a postal remark 'Un-claimed'. There after the case was posted on 26-6-91 on which date the employer was absent. Hence the arguments were heard and thereafter the matter was fixed for decision.

9. I have purposely reproduced the entire history of this proceeding only with a view to show that although several adjournments were sought by the employer to settle the matter amicably, still he did not bother to materialise his desire and ultimately he chose to remain absent although a final notice was sent to him. This only shows that the employer had indulged into delaying tactics without there being any bonafide desire to settle the claim of the workman amicably. It further shows that there must not have been any substance in the employer's several contentions which he has taken in the written statement at Exb. 7. At the cost of repetition, I would say that the entire burden of proving the three issues lies on the employer which he miserably failed to substantiate. On the other hand the workman has led cogent and convincing evidence in proof of his claim which I would briefly consider.

10. The workman - Shri Vinayak S. Jalmi has examined himself at Exb. 3 wherein he has stated that he was employed by the Employer from 9-1-82 on a monthly salary of Rs. 450/- p.m. However his salary was increased to Rs.510/- p.m. in 1983 and to Rs.600/- p.m. in 1984. Finally, in the year 1985 his salary was increased to Rs. 800/-. He has also stated that when he was employed no written order was given to him. However, he has maintained one diary in which he made the necessary entries about the payments made to him by the employer from time to time. He has produced that diary wherein he has noted down the entire account of the payments made to him by the employer from 9-1-82 to 1-5-86. He has also stated that the Employer was not giving his salary from month to month. Finally he has stated that on 26-5-86 he was removed from service but no written order was issued to him. He was also not paid the arrears of salary as also his legal dues. He has given account from his diary showing that an amount of Rs. 4939/- was outstanding when he was retrenched. Now, significantly the Employer was absent on 6-2-88 as also on 11-3-88 on which date the evidence of the workman was recorded. Hence whatever has been stated by the workman has gone un-challenged and hence there is no reason why the same should not be accepted in proof of his contentions.

11. The workman also led the evidence of one Ragunath Jalmi (Exb.11) who has also fully supported the workman's say on all the points. There is absolutely nothing in his cross examination which would dislodge his assertions.

12. Then there is the evidence of Tulsidas Gawde (Exb.10). He has also stated that the workman was employed initially on Rs. 450/- p.m. However later on his pay was increased to Rs. 800/- p.m. He has also stated that in the year 1986 the workman was removed from service. He was very searchingly cross examined by Adv. P. J. Kamat but nothing favourable to the employer's contention has been brought on record in his cross examination. Hence, there is no reason why his evidence should not be accepted as one, supporting the workman's say.

13. This is all the evidence that has been led by the workman in proof of his contention that he was illegally retrenched by the employer, against the explicit provisions of Sec. 25 (F) of the I. D. Act. In view of this conclusion I answer issue No.4 in the affirmative

while the first three issues will have to be answered in the negative on the employer's failure to substantiate the same. In view of my findings on issue No. 4, it follows that the workman will have to be given the reliefs of reinstatement with back wages and he will also be entitled to recover Rs. 4939/- as arrears of pay when he was in actual service. I, therefore answer issue No. 5 accordingly and pass the following order:

ORDER

It is hereby ordered that Party II- Employer - M/s. Naresh Wooden Industries, Mardol, Goa, shall reinstate in service Party I-Workman

Shri Vinayak S. Jalmi, from 1-8-1991 and shall also pay him full back wages from the date of retrenchment onwards and shall also pay him Rs. 4939.00 (Rupees four thousand nine hundred thirty nine only) towards the arrears of salary.

No order as to costs. Inform the Government accordingly about the passing of the award.

Sd/-
(M.A. Dhavale)
Presiding Officer
Industrial Tribunal